REMARKS

Formal Matters

Claims 2, 11, 17, 19, 43 and 71-92 are pending after entry of the amendments set forth herein.

Claims 2, 11, 17, 19, 43 and 71-90 were examined. Claims 2, 11, 17, 19, 43 and 71-90 were rejected.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

The Office Action

Office Action Summary

In the Official Action of April 21, 2009, the Office Action Summary has check marks for both items 2a and 2b, thus indicating that the Office Action is both final and non-final. The Examiner is respectfully requested to clarify that the Office Action of April 21, 2009 is non-final.

Claims Rejected Under 35 U.S.C. Section 102(b) (Baker et al.)

Claims 2, 11, 17, 19, 71-72, 74-77, 79, 83-85 and 87-92 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Baker et al., U.S. Patent No. 6,221,102.

The Examiner asserted that Baker et al. discloses an apparatus having a sinuous, stiffening framework 138 having a plurality of malleable sections (Fig. 11) formed of a deformable material which causes the framework to remain in a second configuration after being deformed from a first configuration, even after cessation of application of deformation force used to deform said framework into said second configuration. The Examiner reasoned that the hooks 151 attach to the tissue, so that when the balloon is removed, the framework does not return to the first configuration because the framework is now attached to the tissue.

Applicants respectfully traverse. It appears that the Examiner has identified the claimed malleable sections as reading on reference numeral 138 of Baker et al. Assuming this is true, it is noted that the claims above recite that the deformable material of the malleable sections causes the framework to remain in the second configuration after being deformed. It is respectfully submitted that the hooks 151 of Baker et al. are not malleable sections.

To still further clarify the distinction of the malleable sections over the spring means 131 of Baker et al. (which comprises helical coils 136 and struts 137, 138, see column 11, lines 21-25 and 48-62), claims 2 and 87 have been amended above to recite that the deformable material forming the malleable sections has insufficient material memory to move back to a first shape from a second shape, once deformed from said first shape to said second shape. Support for these amendments can be found, for example at page 31, lines 9-11 and throughout the specification and drawings. It is respectfully submitted that the spring means 131 (including struts 138) are formed of Elgiloy, which is a shape memory material, see column 11, lines 10-15. It is respectfully submitted that neither the spring means 131 nor the struts 138 meet the recitations of the malleable sections formed of a deformable material as claimed.

The Examiner further asserted that each malleable section comprises a curved apex 133. If the Examiner considers the "malleable section" to include an apex 133, then it is respectfully submitted that the Examiner cannot also define the "malleable section" as strut 138, but must define the "malleable section" as at least strut 138, apex 133 and strut 137. Further, Applicants note that Baker et al. disclose reference numeral 133 to be the apex of a helical coil 136 that creates a spring force, see column 11, lines 22-24. Baker et al. further discloses at column 11, lines 48-53:

> The helical coil springs 136 placed at the nodes or apices 133 of the vees 132 of the spring means 131 serve to facilitate compression of the graft when it is desired to place the same within the capsule 36 as hereinafter described. The compression of the graft is accomplished by deformation of the coil springs 136 within their elastic limits.

It is respectfully submitted that the disclosure of Baker et al. does not support the Examiner's assertion that apices 133 are apices of malleable members, since Baker et al. discloses that the apices 133 are apices of coil springs.

The Examiner asserted that Baker et al. discloses a tool 64 having a head configured to be inserted into one of the vessels to attaches said means for attaching to the vessel, said head located at a distal end portion of said tool, said head extending transversely to a longitudinal axis of said tool and having a bypass channel defined therethrough and extending transversely to the longitudinal axis, for maintaining blood flow through the vessel when said head is inserted into the vessel. The Examiner referred to Fig. 14 of Baker et al. in support of these assertions.

Applicants respectfully traverse. Fig. 14 shows that reference numeral 64 is a balloon. There does not appear to be any bypass channel through the balloon to allow blood to flow through it, contrary to the Examiner's assertion. The only channel shown is 69, which is a closed-ended tube used to stiffen the balloon 64, as well as to deflate it and inflate it. Further, tube 69 does not extend transversely to the longitudinal axis of the balloon 64, but rather is aligned with it.

Regarding claims 71-72, 74 and 87, the Examiner asserted that Baker et al. discloses a hemostatic medium in the form of a hole 122. Applicants do not understand how a hole can be considered to be a medium configured to stop the flow of blood. It is respectfully submitted that blood would flow through the hole 122 and therefore hole 122 would not function as a hemostatic medium.

The Examiner asserted that Fig. 14 of Baker et al. discloses an anvil as claimed. The Examiner did not specifically identify which portion of Fig. 14 is considered to disclose an anvil. Applicants have been unable to locate an anvil in Fig. 14, as Fig. 14 simply shows the spring means 131 mounted on a balloon 64 being delivered in a vessel. The Examiner is respectfully requested to identify, by specific reference numeral, what is considered to be the "anvil".

With regard to claim 79, the Examiner asserted that Baker et al. discloses first and second cuffs as claimed. The Examiner identified the first and second cuffs as being met by reference numerals 132 and 136 of Baker et al., respectively.

Applicants respectfully traverse. It is respectfully submitted that reference numeral 132 of Baker et al. refers to the V-shape of the spring means 131, and that the V-shape is formed, in part, by strut 138, see Fig. 11. Accordingly it is respectfully submitted that 132 and 138 cannot be reasonably considered to meet the recitations of first and second cuffs in the present claims, since 132 is not a structure at all, but rather a shape formed, in part, by the strut 138.

Regarding claim 85, the Examiner asserted that Baker et al. discloses docking extensions 151 configured to be manipulated to deform said stiffening framework into said second configuration. Reference numeral 151 of Baker et al. refers to a hook, not a docking extension. Further, the hooks 151 are not configured to be manipulated to deform the spring means 131 from a first configuration into a second configuration. The balloon 64 is used to expand the spring means 131, not the hooks 151.

On page 5, last bullet point of the Office Action dated April 21, 2009, the Examiner referred to the claimed malleable sections as being met by "one of 151". It is respectfully submitted that this is inconsistent with the Examiner's earlier indication that the malleable section has a curved apex 133, as the hook 151 does not have an apex 133. Accordingly, it is respectfully submitted that this interpretation is improper and should be withdrawn.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 2, 11, 17, 19, 71-72, 74-77, 79, 83-85 and 87-92 under 35 U.S.C. Section 102(b) as being anticipated by Baker et al., U.S. Patent No. 6,221,102, as being clearly inappropriate.

Claims Rejected Under 35 U.S.C. Section 102(b) (Schomacher)

Claim 43 was rejected under 35 U.S.C. Section 102(b) as being anticipated by Schomacher., U.S. Patent No. 4,233,981.

The Examiner asserted, inter alia, that Schomacher discloses shaping, by bending the mounting structure to define a desired flow area. The Examiner referred to column 4, lines 55-56 of Schomacher and indicated that this was interpreted as "inherently shaping by bending".

Applicants respectfully traverse. To further clarify this distinction, claim 43 has been amended above to recite that the mounting structure, when shaped by said bending, retains a shape resulting from said bending and has insufficient material memory to move back to shape assumed prior to said bending once bending forces have been removed. Support for this amendment can be found, for example at page 31, lines 9-11 and throughout the specification and drawings. It is respectfully submitted that Baker et al. provides an elastic material the follows the movement of the vessel, and that an elastic material will resume its shape when the bending force has been removed.

In view of the above remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claim 43 under 35 U.S.C. Section 102(b) as being anticipated by Schomacher., U.S. Patent No. 4,233,981, as being clearly inappropriate.

Claims Rejected Under Nonstatutory Double Patenting

Claims 2, 11, 17, 19, 43 and 71-92 were rejected on the ground of nonstatutory obviousness-type double patenting, as being unpatentable over the claims of U.S. Patent Numbers 5868763, 6190397 and 6565581. The Examiner asserted that even though the conflicting claims are not identical, they are not patentably distinct from each other because the patent(s) listed above disclose all the limitations of the current invention.

Applicants respectfully traverse. It is respectfully submitted that the Examiner has not set forth a prima facie case of obviousness for the rejections over any of U.S. Patent Numbers 5868763, 6565581 and 6190397. It is respectfully submitted that merely because a prior patent discloses all of the limitations of a currently claimed invention, that this is insufficient basis for a double patenting rejection, as it is the claims that must be relied upon in the earlier patent to show double patenting. Otherwise, a patent could never issue as a continuation or division of an earlier patent without the filing of a terminal disclaimer in each and every continuation and divisional.

In view of the above remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 2, 11, 17, 19, 43 and 71-92 on the ground of nonstatutory obviousness-type double patenting, as being unpatentable over the claims of U.S. Patent Numbers 5868763, 6190397 and 6565581, for failing to set forth a prima facie case of obviousness.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-101CON4.

Respectfully submitted,
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